

50.103-2 Types of contract adjustment.

(a) Amendments without consideration.

(1) When an actual or threatened loss under a defense contract, however caused, will impair the productive ability of a contractor whose continued performance on any defense contract or whose continued operation as a source of supply is found to be essential to the *national defense*, the contract *may* be amended without consideration, but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(2) When a contractor suffers a loss (not merely a decrease in anticipated profits) under a defense contract because of Government action, the character of the action will generally determine whether any adjustment in the contract will be made, and its extent. When the Government directs its action primarily at the contractor and acts in its capacity as the other *contracting* party, the contract *may* be adjusted in the interest of fairness. Thus, when Government action, while not creating any liability on the Government's part, increases performance cost and results in a loss to the contractor, fairness *may* make some adjustment appropriate.

(b) Correcting mistakes.

(1) A contract *may* be amended or modified to correct or mitigate the effect of a mistake. The following are examples of mistakes that *may* make such action appropriate:

(i) A mistake or ambiguity consisting of the failure to express, or express clearly, in a written contract, the agreement as both parties understood it.

(ii) A contractor's mistake so obvious that it was or *should* have been apparent to the *contracting officer*.

(iii) A mutual mistake as to a material fact.

(2) Amending contracts to correct mistakes with the least possible delay normally will facilitate the *national defense* by expediting the *contracting* program and assuring contractors that mistakes will be corrected expeditiously and fairly.

(c) *Formalizing informal commitments*. Under certain circumstances, informal commitments *may* be formalized to permit payment to persons who have taken action without a formal contract; for example, when a person, responding to an agency official's written or oral instructions and relying in good faith upon the official's apparent authority to issue them, has furnished or arranged to furnish *supplies* or services to the agency, or to a defense contractor or subcontractor, without formal contractual coverage. Formalizing commitments under such circumstances normally will facilitate the *national defense* by assuring such persons that they will be treated fairly and paid expeditiously.

Parent topic: [50.103 Contract adjustments](#).